

System: 165.135.210.45 sec fax,sec, 4181087 --- Time Printed: 05-16-2007 09:26:42

*DOCKET FILE COPY ORIGINAL*

From: 7153523198  
Media: Fax 10 pages  
Subject:  
Status:  
Received: 08:56 AM 05/16/07

RECEIVED & INSPECTED

MAY 16 2007

FCC - MAILROOM

203 E. Birch St.  
Edgar, WI 54426  
Phone: 715-352-2351  
Fax: 715-352-3198

**Edgar School District****Fax**

RECEIVED &amp; INSPECTED

MAY 16 2007

FCC - MAILROOM

**To:** FCC**From:** Mark Lacke**Fax:** 202-418-0187**Date:** May 16, 2007**Phone:****Pages:** 9**Re:** CC Docket No. 02-6

☒ **Urgent**    ☐ **For Review**    ☐ **Please Comment**    ☐ **Please Reply**    ☐ **Please Recycle**

**•Comments:** Attached is the appeal for Edgar School District for the COMAD letter received on March 22, 2007, FCC RN 002687820. Please send notice of receipt to markl@edgar.k12.wi.us.

No. of Copies rec'd 0  
List ABCDE \_\_\_\_\_

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

RECEIVED &amp; INSPECTED

MAY 16 2007

FCC - MAILROOM

In the Matter of

Notification of Commitment Adjustment Letters by  
USAC Schools and Libraries Division to the Edgar  
School District, Edgar, WI (BEN 133211)

CC Docket No. 02-6

**REQUEST FOR REVIEW AND WAIVER OF DECISIONS  
OF THE UNIVERSAL SERVICE ADMINISTRATOR**

May 16, 2007

**Appellant**

Mark Lacke, District Administrator  
Edgar School District (BEN 133211)  
203 E. Birch St.  
Edgar, WI 54426  
715-352-2351, fax 715-352-3198  
email: [markl@edgar.k12.wi.us](mailto:markl@edgar.k12.wi.us)

**Introduction**

Edgar School District is appealing the Notification of Commitment Adjustment (COMAD) letter received by our district on March 22, 2007, FCC RN 0002687820. Pertinent information on this letter is listed in the table below. The letter relates to Internet access provided by WiscNet (SPIN, 143004351), Wisconsin's not-for-profit Internet Service Provider (ISP) serving the K-20 education community.

Year	470#	471#	ERN	COMAD funds to be recovered
2001	149640000316640	234973	549810	\$2923.20
Total COMAD funds to be recovered				\$2923.20

**Core Issue and Edgar School District Request to the Commission**

USAC has issued the COMAD letter claiming that there was improper service provider involvement with Edgar School District's competitive procurement and in preparation of Form 470. This conclusion was based on the fact that Carolyn S. Kuhnmuensch, Edgar School District Director of Technology, was listed as the contact on the Form 470. Mrs. Kuhnmuensch served on the WiscNet board during this funding

No. of Copies rec'd \_\_\_\_\_  
List ABCDE \_\_\_\_\_

0

period. Because of her board membership, USAC claimed that the Form 470 was tainted and it is seeking full reimbursement of the 2001-2002 funding commitment which was included on the Form 471 application listing a funding request for WiscNet. The facts concerning Edgar School District's relationship with WiscNet, as explained in detail below, establish that there is no conflict of interest or impropriety with Edgar School District's competitive procurement for Internet access. Accordingly, we respectfully ask the Commission to cancel the USAC COMAD letters or, alternatively, to grant Edgar School District a waiver of any applicable regulations. (See "Action requested" section below.)

#### **Discussion and Rebuttal of USAC COMAD Claim**

We are well aware of the Commission's concerns about waste, fraud, and abuse in the E-rate program and that a fair and open bidding process is a key factor in helping guard against these concerns. According to FCC precedent, service providers cannot be involved with the preparation or submission of a Form 470, or with any steps in a competitive procurement prior to an award being made to the successful proposer. The crux of USAC's basis for the COMAD is its conclusion that because Mrs. Kuhnmuench is on the WiscNet board and because she also was the contact person for a Form 470, there was somehow improper service provider involvement or a conflict of interest due to her dual roles. USAC failed to appreciate or understand, however, that Mrs. Kuhnmuench's election to the Board of WiscNet is by virtue of her employment with Edgar School District in her capacity as technology director for a K-12 institution. Indeed, Mrs. Kuhnmuench is not and never has been a WiscNet employee. She has no ownership interest in WiscNet and does not benefit financially in any way from a decision to choose WiscNet as Edgar School District's Internet provider.<sup>1</sup> Clearly, Mrs. Kuhnmuench's role in WiscNet had no bearing whatsoever in Edgar School District's selection of the successful vendor for Internet access service. Edgar School District denies that Mrs. Kuhnmuench's service on the WiscNet board tainted the Form 470 or the competitive bidding process. Under all circumstances she represents Edgar School District and not any provider in the 470 bidding process.

For 2001-2002 Edgar School District selected WiscNet as its ISP because no other Internet provider bid on the Form 470 we filed for that year. When an applicant receives no competing bids for a service<sup>2</sup>, it is free to continue to use its current service provider, which is exactly how Edgar School District came to

<sup>1</sup> We note that several members of the USAC board are employees of providers that benefit directly from the E-rate program. We think Mrs. Kuhnmuench's service on the WiscNet board is more removed from potential conflicts than the service of these providers on the USAC Board.

<sup>2</sup> *Request for Review of the Decision of the Universal Service Administrator by the Winston-Salem/Forsyth County School District*. SLD No. 302305, CC Docket No. 96-45 (released December 8, 2003). Paragraph 14: "Our rules require applicants to seek competitive bids; they do not require an applicant to have competing bidders where none appear."

select Internet access service from WiscNet in 2001-2002. In fact, Edgar School District has received Internet access from WiscNet since 1996, predating Mrs. Kuhnmuensch's service on the WiscNet Board.

Paragraph ten in the Commission's *Mastermind* decision states that an applicant violates bidding requirements when it "surrenders control of the bidding process to a service provider that participates in that bidding process."<sup>3</sup> Edgar School District retained complete control of its bidding processes and did not surrender the bidding process to a provider. Also in paragraph ten, the Commission states its concern that "other bidders may not receive from the contact person information of the same type and quality that the contact person retains for its own use as a bidder." All bidders for any services would have received the same information. But Edgar School District received no bids nor had any contacts from any other Internet providers during the bidding process for the 2001-2002 funding year. If by some remote chance another Internet Service Provider realized that Mrs. Kuhnmuensch served on the WiscNet board, that provider could still have submitted a bid. If the bid was lower than the cost for WiscNet, then Edgar School District would have welcomed the prospect of lowering its costs for Internet service. However, no other bids were ever submitted to Edgar School District. Because of this, our district continued to select WiscNet, and the issue of providing all prospective bidders with the same information is not relevant.

Further in the *Mastermind* decision, the Commission expresses concern that a prospective bidder may not participate in the bidding process if it believes that another bidder is serving as the contact person.<sup>4</sup> First, to make this assumption ignores the well known fact, which the Commission itself has recognized<sup>5</sup>, that many E-rate applicants nationwide never receive any bids for services posted on their Form 470s. Second, any bidder would have to know that Carolyn Kuhnmuensch serves on the WiscNet board, knowledge of which by the hypothetical bidder is highly doubtful. Third, in the unlikely chance a provider knew of Mrs. Kuhnmuensch's service on the WiscNet board, the provider would then have to assume that it would not receive the same information as any other provider. While not happening during 2001-2002, we believe it germane to note the following regarding competitive bids: The Oshkosh (WI) Area School District also has an employee on the WiscNet board<sup>6</sup>. During the current (2006) funding

<sup>3</sup> *Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, (released May 23, 2000).

<sup>4</sup> *Id.* At paragraph 11.

<sup>5</sup> *Winston-Salem/Forsyth County School District*, SLD No. 302305, CC Docket No. 96-45, (released December 8, 2003). Paragraph 14: "Its [the school district's] decision to enter into a contract with the one bidder is no different than the thousands of other applicants who receive either no bids, or only one bid, in response to a FCC Form 470 posting." [Emphasis added.]

<sup>6</sup> The Oshkosh (WI) Area School District will be also be submitting an appeal to the Commission. If the Commission finds that WiscNet board membership taints the 470 bid process, then, at least for 2006, the Oshkosh schools would have been forced to select another Internet provider at a significantly higher cost than WiscNet and

year, the school district did receive Internet service bids from AT&T and Charter Communications. *Both providers' bids were more than twice as high as the Internet costs bid by WiscNet.* If these two providers knew that Oshkosh schools had an employee on the WiscNet board, it certainly did not discourage them from bidding for the district's Internet service.

From a broader perspective, WiscNet is a not-for-profit, membership-owned cooperative that is governed by an elected board of directors drawn from its K-12 schools, library, and higher education members. It was founded by UW-Madison and remains part of UW-Madison. Other states and regions have similar organizations. As the Internet and all its varied applications continue to have an increasing impact on educating our children, we need to encourage more, not less, K-20 collaboration. In this regard, we find it encouraging that just in the past two months the FCC has been asking the state research and education network community (including WiscNet) how the E-rate program can help foster better partnerships between K-12 and higher education. Unfortunately—to put it mildly—this COMAD letter threatens one of the best examples of such a partnership. Allowing USAC to recover the discounts to Edgar School District will have a very chilling effect on the positive, collaborative relationship WiscNet-type organizations throughout the country have built between the K-12 and higher education communities. To preserve their E-rate eligibility, K-12 member institutions will forbid their staff from serving in the governance of their state research and education networks, to the detriment of the entire education community.

#### **Action Requested**

Based on the above information, Edgar School District respectfully asks the Commission to take one of the following actions, listed in our priority order.

1. The Commission determines that there has been no violation of the competitive bidding regulations and cancels USAC's COMAD letter.
2. The Commission determines that there was a competitive bidding violation but waives its relevant rules because "there is no evidence at this time in the records that the petitioner engaged in activity to defraud or abuse the E-rate program."<sup>7</sup> And furthermore, the Commission finds that "the policy

---

thus likely to violate FCC regulations requiring that "price must be the primary factor in considering bids."

Paragraph 50 in the *Ysleta Order*, CC Docket No. 96-45, FCC 03-313, (released December 8, 2003).

<sup>7</sup> Paragraph 9, *Requests for Review of Decisions of the Universal Service Administrator by Academy of Excellence, Phoenix, AZ, Et Al.*, Schools and Libraries Universal Service Support Mechanism. Granted the Requests for Review (Dkt No. 02-6). Action by the Commission. Adopted: 04/18/2007 by Order (FCC No. 07-60, released May 9, 2007).

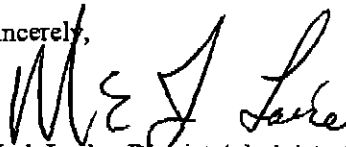
underlying these rules, therefore, was not compromised due to Petitioner's errors."<sup>8</sup> In granting a waiver, it cancels USAC's four COMAD letters.

3. The Commission determines that there was a competitive bidding violation, but waives its relevant rules because it serves the educational interests of Edgar School District and the interests of the teachers and students it services.<sup>9</sup> And the "applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest."<sup>10</sup> Furthermore, any commitment adjustment will not benefit any other Internet provider. In granting a waiver, it cancels USAC's COMAD letter.
4. The Commission determines that there was a competitive bidding violation and it does not waive its regulations. If the Commission takes this action, Edgar School District requests a substantial reduction in the amount owed, in accord with language in the FCC's *Fifth Order*.<sup>11</sup>

#### Conclusion

I hope the Commission will select one of the first three actions listed above and thus grant our appeal and cancel the COMAD letter. Needing to pay back \$2,923.20 will mean a decrease in services going to support our school, our teachers and students. If you have any questions, please do not hesitate to contact me. Thank you very much for considering our request.

Sincerely,



Mark Lacke, District Administrator  
Edgar School District  
715-352-2351 email: markl@edgar.k12.wi.us

<sup>8</sup> Paragraph 9, *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, Et Al.*, Schools and Libraries Universal Service Support Mechanism. Granted the Requests for Review and/or Requests for Waiver (Dkt No. 02-6). Action by the Commission. Adopted: 04/18/2007 by Order (FCC No. 07-63), (released May 9, 2007).

<sup>9</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, CC Docket No. 02-6, File Nos. SLD-487170, et al. (released May 19, 2006). Paragraph 2, the Commission recognizes that under the Communications Act of 1934, as amended, it is "helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services."

<sup>10</sup> *Id.* At paragraph 11.

<sup>11</sup> *Fifth Report and Order*. CC Docket No. 02-6 (released August 13, 2004). Paragraph 31, "Finally, we decline to implement a rule generally requiring *full recovery* [emphasis added] when a pattern of violations is discovered, recognizing the punitive nature of such a rule."



Schools &amp; Libraries Division

**Notification of Commitment Adjustment Letter****Funding Year 2001: 7/01/2001 - 6/30/2002**

March 22, 2007

**Carolyn S. Kuhnmuench  
EDGAR SCHOOL DISTRICT  
203 E BIRCH ST  
EDGAR, WI 54426**

**Re: Form 471 Application Number: 234973  
Funding Year: 2001  
Applicant's Form Identifier: internet471  
Billed Entity Number: 133211  
FCC Registration Number: 0002687820  
SPIN Name: WiscNet  
Service Provider Contact Person: Consuelo Sanudo**

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

**TO APPEAL THIS DECISION:**

*If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:*

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal electronically, please send your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org) using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

**FUNDING COMMITMENT ADJUSTMENT REPORT**

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Consuelo Sanudo  
WiscNet

**Funding Commitment Adjustment Report for  
Form 471 Application Number: 234973**

---

Funding Request Number:	549810
Services Ordered:	INTERNET ACCESS
SPIN:	143004351
Service Provider Name:	WiscNet
Contract Number:	EdgarSD-0102-g
Billing Account Number:	EdgarSD1
Site Identifier:	133211
Original Funding Commitment:	\$2,923.20
Commitment Adjustment Amount:	\$2,923.20
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$2,923.20
Funds to be Recovered from Applicant:	\$2,923.20

**Funding Commitment Adjustment Explanation:**

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that service provider contact information appeared on the cited Form 470. The contact person on the cited Form 470 Application Number: 149640000316640 was Carolyn S. Kuhnmuench. Carolyn S. Kuhnmuench was also a board member for WiscNet. WiscNet was selected a service provider pursuant to the posting of this Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. If the applicant has posted a Form 470 that contains contact information for a service provider that participates in the competitive bidding process, the applicant has violated this requirement, and FCC rules consider this Form 470 to be tainted. All Funding Requests that relate to this Form 470 are required to be denied because the Form 470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING**